

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

A. L.A. SULIEMAN, M.D.,

Plaintiff,

v.

ORDER
05-CV-766S

ROSWELL PARK CANCER INSTITUTE and
JAMES L. MOHLER, M.D.,

Defendants.

1. On October 24, 2005, Plaintiff commenced this employment discrimination action against Defendants. On December 16, 2005, Chief Judge Richard J. Arcara, the District Judge to whom this case was previously assigned, issued an Order granting Magistrate Judge Leslie G. Foschio full pretrial dispositive authority pursuant to 28 U.S.C. § 636(b)(1). (Docket No. 12.)

2. On October 11, 2007, Defendant James L. Mohler, M.D., filed a Second Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Docket No. 26.) On May 29, 2008, Judge Foschio filed a Report and Recommendation recommending that Defendant Mohler's motion be granted to the extent it seeks dismissal of Plaintiff's whistleblower claim under New York Labor Law § 741 against Defendant Mohler in his individual capacity, but denied to the extent it seeks dismissal of the claim against Defendant Mohler in his capacity as an agent of Defendant Roswell Park or as Plaintiff's supervisor.

3. No objections to Judge Foschio's Report and Recommendation were received from either party within ten days of the date of its service, in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3).

4. This Court has carefully reviewed the Report and Recommendation, as well as the pleadings and materials submitted by the parties, and will accept Judge Foschio's recommendations.

IT HEREBY IS ORDERED, that this Court accepts Judge Foschio's Report and Recommendation (Docket No. 43) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Defendant Mohler's Second Motion to Dismiss (Docket No. 26) is GRANTED in part and DENIED in part consistent with Judge Foschio's Report and Recommendation.

SO ORDERED.

Dated: June 28, 2008
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge